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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/811,237

Applicant(s)

ABLABUTYAN ET AL.

Examiner

James Keenan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/20/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The disclosure is objected to because of the following informalities: on page 5, element numeral 50 has been used to denote both a "hinge" and "steps".

Appropriate correction is required.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "50" has been used to designate both a hinge and steps. Correction is required.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show bolts 64 (figure 6) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-3, 9, and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The recitations in claims 2 and 13 that the liftgate is “assembled” and “tested” before being “secured to the vehicle body” fail to present any meaningful structural limitations and thus do not further limit the claims from which they depend or otherwise set forth any patentable distinction.

Similarly, the recitations in claims 3 and 9 that the liftgate is “configured” to “be secured to the vehicle body” and “stack with a similar liftgate” set forth no structural limitations.

Also, the scope of claim 12 is unclear in that it is not understood what significance the securement of the vehicle body to the vehicle chassis has relative to that of the liftgate; the chassis is not believed to be within the scope of the claimed invention.

Re claim 14, it is not clear relative to what “lower” refers. Furthermore, the recitation that the “frame member” is part of the liftgate is believed to be incorrect. The frame member is disclosed as part of the vehicle body. Although an alternative embodiment is disclosed in which the frame member can be preattached to the liftgate, there is no disclosure that the frame member *per se* is any different or otherwise not a part of the vehicle structure.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1-4, 6, 9-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunlop et al (US 5,641,262).

Dunlop et al show a cantilever liftgate comprising side plates 3A, 3B, extension plate 5A, 5B, hydraulically driven lift frame 81 pivotally attached to the side plates via parallelogram linkage assembly 35, 37, and liftgate platform 87 rotatably attached to the lift frame, wherein the liftgate is secured only to the vehicle body via brackets 7A, 7B in a fully assembled state, as shown in figures 5A-C.

Re claim 4, absent any structural limitations, the tops 17A, 17B of the side plates are considered to be “formed steps”, or certainly could be used as such.

Similarly, re claim 6, the lower rear edges of the side plates are considered to comprise “dock impact bumpers”.

Also similarly, re claim 9, the liftgate could clearly be stacked with another liftgate, particular when in the figure 6 position oriented horizontally.

8. Claims 1-3 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nilson (US 2,732,960).

Note side plates 20, extension plate 48, lift frame 24, 29, platform 26, and channels 18 which are attached only to the vehicle body. Also note col. 3, lines 17-18, which state that the lift frame can be hydraulically driven.

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5, 7-8, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunlop et al.

Dunlop et al do not show the side plates to include brackets for the hydraulic pump or lights, or for the lift frame to include a tube functioning as an underride guard. It is noted, however, that the extension plate includes brackets for the pump (figure 4) as well as lights (figures 5A-B), and that the liftgate could be “scaled up for use on larger trucks” (col. 5, lines 28-29), in which underride guards are required.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dunlop et al by mounting or incorporating brackets for the pump and lights into the side plates instead of the extension plate, as this would simply be an alternate equivalent design expediency. Furthermore, it would have also been an obvious design expediency to have incorporated into the lift frame a tube functioning as an underride guard, particularly if the liftgate was scaled for a larger truck, as this would simply be the addition of a safety requirement.

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Re claim 14, as best understood, it would have been an obvious design expediency, if not inherent, to have attached a frame member of the liftgate to the vehicle body, in addition to the brackets 7, as this would provide a more secure attachment thereof.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mortenson (US 4,078,676 in view of Dunlop et al.

Mortenson shows a liftgate for securement to a vehicle body including side plates 14, trunnion tube 16, extension plate 46 which can be welded to the truck body, a lift frame having parallelogram linkages 20 with upper and lower arms and lift frame tube 44, liftgate platform 28 with “stop” 48, as broadly claimed, which prevents movement of the platform past a horizontal orientation parallel with the vehicle body (figure 3), and hydraulic cylinder 42 which raises the liftgate platform from a lowered (fig. 4) to a raised (fig. 3) position while maintaining the platform horizontal when the platform is placed in a horizontal orientation, and which raises and inverts the platform into a storage position (fig. 8) when the platform is rotated to a lower vertical position (fig. 5).

Although the side plates are disclosed as being secured to the vehicle frame members 12, the recitation that the side plates “are configured to be secured to the vehicle body” does not define over this teaching. Applicant is claiming neither any particular means for securing the side plates nor any particular structure of the vehicle body.

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Mortenson does not, however, show a single hydraulic cylinder secured to the trunnion tube at one end and to the lift frame tube at the other end, instead utilizing two cylinders.


Dunlop et al teach in the background section that the use of either a single central hydraulic cylinder or two outer hydraulic cylinders are known in the art as alternate equivalents.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Mortenson by utilizing a single central hydraulic cylinder in place of the two outer cylinders, as this is disclosed by Dunlop et al to be an alternate equivalent design choice. To have secured one end of such a cylinder to the trunnion tube and the other end to the lift frame tube would logically follow as a design expediency.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lugash et al (US 5,513,943) show a liftgate wherein side plates include light fixtures 190-192. Morton (US 4,818,842) shows a parallelogram liftgate secured only to the body of a vehicle but utilizes electric rather than hydraulic power, and also shows a stop member 69 to prevent rotation of the platform beyond a horizontal orientation.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is (703) 308-2559.

jwk  
February 27, 2002

  
JAMES W. KEENAN  
PRIMARY EXAMINER